IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL APPEAL NO. 699 OF 2001

Salim Yusum Memen @ Kalya Salim .. Appellant

versus

State of Maharashtra .. Respondents

...

Mr.Ganesh Gole for the appellant.

Mr.A.M. Shringarpure for the respondents.

CORAM : V.M. KANADE, J

DATED : 6th September 2004.

ORAL JUDGEMENT :-

1. Heard the learned counsel appearing on behalf of the appellant and the learned APP appearing on behalf of the State.

2. The appellant is challenging the judgement and order passed by the Vth Addl. District & Sessions Judge, Thane in Sessions Case No.124 of 2000 hereby

convicting the appellant original accused under section 326 of the IPC and is sentenced to undergo Rigorous Imprisonment for 10 years and to pay find of Rs.5,000/- and in default of payment of fine to undergo Rigorous Imprisonment for 2 1/2 years. The prosecution case is that on 11th December 1999, the complainant who is the wife of the accused had gone to her mothers place at Thane. At the material time, the holy month of Ramzan was in progress and the complainant was observing rosa. During the whole day when she was about to release the fast of rosa at about 7.00 p.m., she had therefore brought her children from her first marriage along with her. The complainant's sister along with her children were also present in the house of her mother. The complainants mother had gone to the market. At about 7.30 p.m, the appellant original accused salim came to her mothers house and demanded her ornaments from her person. The complainant requested the accused to wait for some time till her mother returns and told him that thereafter he may take away the ornaments. The accused being annoyed by her answer took out a bottle filled with acid and threw the contends of the bottle on the complainant as a result of which the complainant received burn injuries on her head, eyes,

cheeks, neck, both the hands and her back. Ruksar who was the daughter of complainant's sister was also injured as a result of the acid which was thrown on the complainant. The complainant and Ruksar were taken to the hospital for treatment. Their statement was recorded and an offence under section 326, 307 of the IPC was registered against the accused. A charge-sheet was filed and the matter was transferred to the Court of Sessions. The accused was arrested on 24th December 1999.

3. The prosecution examined in all six witnesses and also relied on documentary evidence. The trial Court acquitted the accused under section 307 of the IPC and held that the accused was guilty of having committed an offence under section 326 of the IPC and sentenced him to undergo Rigorous Imprisonment for 10 years and to pay fine of Rs.5,000/- and in default to undergo a further period of 2 1/2 years. The trial Court further directed that out of the amount of Rs.5,000/- being deposited by the accused, an amount of Rs.4,000/- be paid to the complainant towards her expenses for medical treatment.

4. The appellant has preferred this appeal

against the said judgement and order. I have perused the oral and documentary evidence as also the judgement and order passed by the trial Court. In my view, the trial Court has correctly come to the conclusion that the offence that the prosecution has proved beyond reasonable doubt that the accused has committed an offence under section 326 of the IPC. The trial Court has relied on the evidence of the complainant who was the wife of the accused. The medical evidence given by Dr.Tejaswini Bhagat also has been taken into consideration. Similarly, the trial Court has considered the evidence of PW no.1 Rahana who was also injured in the said incident. Thus, the presence of the accused, his identity and his involvement in the offence is proved beyond reasonable doubt. The panchnama clearly shows that glass pieces of the broken bottle were lying scattered on the spot. Similarly, two dupattas, one belonging to the complainant and another to Farhana were found on the spot along with samples of acid and blood which were sent to the Chemical Analyser for analysis. The Chemical Analyser’s report specifically shows that the substance found thereon is sulphuric acid. This evidence is being supported by PW no.6 Bhoir. The Investigating Officer has corroborated the evidence of

the said panch witness, Bhoir. Thus, in my view, the trial Court has rightly convicted the accused under section 326 of the IPC. So far as the sentence is concerned, the trial Court has convicted the accused under section 326 to suffer Rigorous Imprisonment for 10 years and to pay fine of Rs.5,000/-. The trial Court has observed that the act of the accused amounted to atrocity of limit and therefore, came to the conclusion that no leniency should be shown to the accused. The accused at the time of the incident was 24 years of age and committed offence in a fit of range. PW no.4 Dr. Tejaswini Bhagat who was examined complainant noted the following injured on the person of the complainant.

i) Right upper limb 9% burn injuries.
ii) Left upper limb 9% burn injuries.
iii) Face 5%
iv) back 6% burn injuries.

Thus, in all the complainant suffered 29% burn injuries. PW no.1 Rehana was also examined by Dr.Tejaswini Bhagat who suffered 3% injuries on the right upper limb, 2% on the part of the abdomen and thus total 5% injuries was found on her person. From

her evidence, it appears that the complainant was discharged on the very next day on 12th December 1999. The evidence has volunteered that the complainant was discharged when she was not on duty.

5. Grievous hurt has been defined in section 320. Section 320 reads as under:-

> 320. The following kinds of hurt only are designated as "grievous"
>
> First - Emasculation.
>
> Secondly- Permanent privation of the sight of either eye.
>
> Thirdly - Permanent privation of the hearing of either ear.
>
> Fourthly - Privation of any member or joint.
>
> Fifthly - Destruction or permanent impairing of the powers of any member of joint.
>
> Sixthly - Permanent disfiguration of the head or face.
>
> Seventhly - Fracture or dislocation of a bone or tooth.
>
> Eighthly - Any hurt which endangers ife or which causes the suffered to be during the space of twenty days in severe bodily pain, or unable to follow his ordinary pursuits.

From the evidence of PW no.4, Dr. Tejaswini Bhagat,

it does appear that the complainant had suffered disfiguration of the fact to the extent of 5% and other burn injuries to the extent of 29%. The fact remains that however the complainant and PW no.1 Rahana were discharged on the very next day i.e. 12.12.1999. Section 320 lays down any hurt which endangers life or which causes the sufferer to be during the space of twenty days in severe bodily pain. The complainant in the present case was discharged on the very next day. Considering the age of the accused, the fact that a permanent disfiguration of the fact is only to the extent of 5% in my view, this is a fit case where the sentence should be reduced from 10 years to 6 years. The appellant would be entitled to set off for the period during which he has been detained under this offence.

Appeal is partly allowed in the above terms.

V.M.KANADE, J